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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: MM Docket No. 95-110

Dear Mr. Caton:

Transmitted herewith, on behalf of Carlos J. Colon Ventura, are an original and four copies of his "Comments" in the above-captioned proceeding involving an amendment to the Commission's Rules concerning the automatic stay of certain allocations orders.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for
Carlos J. Colon Ventura

Enclosures

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BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 1.420(f))
of the Commission's Rules Concerning)
Automatic Stay of Certain)
Allocations Orders)

MM DOCKET NO. 95-110

Directed to: The Commission

COMMENTS

Carlos J. Colon Ventura ("Mr. Colon"), by his attorneys, hereby respectfully submits his Comments with regard to the Commission's *Notice of Proposed Rule Making*, FCC 95-277, released July 21, 1995 ("*NPRM*"), which proposes the amendment of Section 1.420(f) of the Commission's Rules to eliminate the automatic stay of certain allocations orders. With respect thereto, the following is stated:

1. Mr. Colon is the licensee of Station WSAN(FM), Vieques, Puerto Rico. Currently, he is himself personally experiencing the detrimental effects which result from the current automatic stay provision. Section 1.420(f) of the Commission's Rules currently provides that if a party files a petition for reconsideration or an application for review of an order amending the FM or TV Table of Allotments to specify that any licensee or permittee will operate on a different channel, the effect of the order is automatically stayed pending resolution of the petition or application. As the Commission recognized in the *NPRM*, this provision can cause unwarranted delay in the provision of new or improved service to the public. Mr. Colon's

current situation provides a case in point exemplifying the problems caused by the automatic stay provision. Accordingly, Mr. Colon strongly supports elimination of the automatic stay. Indeed, Mr. Colon proposes that Section 1.420 of the Commission's Rules be further modified to provide that no petitions for reconsideration of orders modifying the FM or TV Table of Allotments may be filed. Instead, parties should be limited to filing applications for review in order to avoid the further delay of two layers of review of the same matter. The Commission stated in the *NPRM* that it was initiating this proceeding "to improve Commission procedures governing proposals to amend the FM Table of Allotments and the Television Table of Allotments" for the purpose of eliminating delays in improved service to the public. *NPRM* at ¶

1. The proposal to eliminate petitions for reconsideration is another such proposal within the scope of the *NPRM*'s purpose of improving procedures in order to expedite expanded service.

2. Mr. Colon has been attempting to obtain a modification of his license and change transmitter sites for five and one-half years. On February 6, 1990, Mr. Colon, together with Jose J. Arzuaga, licensee of WQQZ(FM), Quebradillas, Puerto Rico, filed a Joint Petition for Rulemaking seeking a change in channel and community of license for WSAN(FM). In response to the Joint Petition for Rule Making, the Commission issued a *Notice of Proposed Rule Making and Orders to Show Cause*, 6 FCC Rcd 5310 (1991), proposing the requested changes. In response to the *Notice of Proposed Rule Making*, Mr. Colon submitted a counterproposal, requesting that the new channel for WSAN(FM) be reallocated to a different community than that originally proposed in the Joint Petition for Rule Making. Thereafter, the Commission issued a *Further Notice of Proposed Rule Making*, 7 FCC Rcd 3324 (1992), incorporating Mr. Colon's counterproposal and all other related changes proposed up to that

time. The deadline for submitted comments was July 20, 1992, and the deadline for reply comments was August 4, 1992. No decision was reached in this proceeding until a *Report and Order*, DA 95-1323, was released on June 22, 1995, almost three years after the close of the comment period.

3. The changes adopted in the *Report and Order* will allow at least two communities to have their first local aural transmission service, one community to be allotted either its first or second local aural transmission service, and allow another station to improve its service and eliminate a short-spacing. Further, the proposed modification of WSAN(FM) will allow it to serve 1,301,685 additional people, which represents an increase of 634 percent.

4. All of these public interest benefits will now be substantially delayed, however, and WSAN(FM) may well be forced to go off the air in the interim. The licensees of two stations ordered to change channels in order to accommodate the modifications made to the Table of Allotments have filed petitions for reconsideration of the *Report and Order*. Therefore, pursuant to the current Section 1.420(f) of the Rules, the effective date of the new channel and community of license for WSAN(FM)'s facilities was automatically stayed. Thus, absent a waiver of the automatic stay, Mr. Colon could not file an application for construction permit for his station's modified facilities until after the petitions for reconsideration, and any subsequent applications for review, are resolved by the Commission. This delay is likely to cause the station to go dark.

5. Mr. Colon operates WSAN(FM) from its current transmitter site pursuant to a special use permit issued by the U.S. Department of the Interior Fish and Wildlife Service. Mr. Colon's current permit will expire on September 30, 1995. The permit explicitly states on its face that it will not be renewed for any further terms. This refusal to renew the permit is based upon

concerns about the maritime environment near the transmitter site. All property owned by the licensee must be removed from the site by November 30, 1995. Therefore, it is of great urgency to Mr. Colon that he be able to file an application for construction permit, have it granted, and be able to commence construction of his new facilities as quickly as possible. With the automatic stay in place, Mr. Colon would not be able to do so. As the result, many people are likely to lose a broadcast service, and first local service and improved service will be denied to many more. Obviously, this result does not serve the public interest. Accordingly, Mr. Colon strongly supports the Commission's proposal to eliminate the automatic stay provision.

6. Mr. Colon additionally urges that the Commission further modify Section 1.420(f) to provide that no petitions for reconsideration may be filed concerning orders modifying the FM and TV Table of Allotments. Rather, parties should be limited to moving forward with an application for review. The ability to seek reconsideration or review at two levels simply adds further delay to the process without providing any offsetting benefits to the parties. Parties objecting to changes in allotments would not be deprived of their right to full Commission review, as they could proceed with an application for review. All that would be eliminated would be the need for the same staff that issued the initial Report and Order in a proceeding to re-hash the same arguments that have already been disposed of, with the likely result that the staff will continue to reach the same conclusions. The change would be in the best interests of the public and the Commission's staff, which is already overworked and facing additional cuts. See Statement of Chairman Reed Hundt, released August 17, 1995. The only ones who benefit from this process are parties that wish to delay the introduction of a new or improved competitive service in their markets. Instead, parties should be required to move forward

immediately to the next level of review and afford the full Commission an opportunity to examine the merits of the proceeding.

7. Mr. Colon's circumstances are again illustrative of the detrimental effects of the current system. Mr. Colon has, in fact, filed an application for construction permit for the modified facilities authorized in the allotment proceeding and has sought a waiver of the automatic stay. Even if that waiver is granted, however, and Mr. Colon receives an expeditious grant of the construction permit, his difficulties will not be at an end. Mr. Colon still will not be able to go on the air with his new facilities until the other two stations ordered to change channels implement those changes. The other two stations cannot be forced to make those changes until the *Report and Order* in the allotment proceeding becomes a final order. The order cannot become final, however, until first, the petitions for reconsideration are resolved, and second, any applications for review are resolved. This two-level review process inevitably will create significant processing delays. Again, the result of this delay will be to force a station to go dark and to delay introduction of first local service and improved service to many people. This result is contrary to the public interest.

8. Forcing parties to proceed with an application for review will not prejudice the parties' ability to advance legitimate arguments and have them fully considered by the Commission. Once arguments raised at the comment stage have been considered by the staff and found to be without merit, there is little point in having the same staff look at the same arguments yet again. Rather, the next logical step is to proceed forward to Commission review of the staff's decision. Parties should not be allowed to endlessly reargue the same points before the same body, but should be forced to keep moving forward. Thus, elimination of the petition

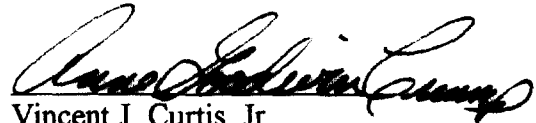
for reconsideration in favor of requiring an immediate application for review will eliminate needless delays in new and improved service without depriving any party of the opportunity to have his views fully considered by the Commission.

WHEREFORE, the premises considered, Mr. Colon hereby urges the Commission to amend its Rules to eliminate the automatic stay as proposed in the *NPRM* and further to provide that no petitions for reconsideration may be filed in FM and TV allotment proceedings.

Respectfully submitted,

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